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IN THE

Supreme Court of the United States

October Term, 1963

No. 792

HILTON HOTELS, CORPORATION, ALLEGHENY HOTEL CORPORATION, SHERATON MID-CONTINENT CORPORATION,
Petitioners,

v.

ROBERT C. WEAVER, Administrator of the Housing and Home Finance Agency, *Respondent.*

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

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v.

ROBERT C. WEAVER, Administrator of the Housing and Home Finance Agency, *Respondent.*

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

Petitioners, Hilton Hotels Corporation, Allegheny Hotel Corporation, and Sheraton Mid-Continent Corporation, respectfully pray that a Writ of Certiorari issue to review the judgment of the Court of Appeals for the District of Columbia Circuit.

OPINIONS BELOW

The opinion of the United States Court of Appeals for the District of Columbia Circuit is reprinted as Appendix A, p. 1a, *infra*. The order of the District Court for the District of Columbia is reprinted as Appendix B, p. 2a, *infra*. The opinion of the United

States Court of Appeals for the Third Circuit in *Pittsburgh Hotels Association, Inc. v. Urban Redevelopment Authority of Pittsburgh*, 309 F.2d 186 (3rd Cir. 1962), *cert. denied*, 372 U.S. 916 (1963) is reprinted as Appendix C, p. 3a, *infra*.

JURISDICTION

The judgment of the United States Court of Appeals for the District of Columbia Circuit was entered November 18, 1963. The jurisdiction of this Court is invoked pursuant to 28 U.S.C. § 1254(1). Jurisdiction of the District Court for the District of Columbia was invoked pursuant to 28 U.S.C. § 1331; Section 10 of the Administrative Procedure Act, 60 Stat. 243, 5 U.S.C. § 1009; and Section 106 (c)(1) of the Housing Act of 1949, 63 Stat. 418 (1949), 42 U.S.C. § 1456(c)(1). An actual controversy between appellants and appellee was alleged wherein the matter in controversy exceeds the sum or value of $10,000. Jurisdiction in the court below was founded on 28 U.S.C. §§ 1291 and 1294.

STATUTE INVOLVED

The Housing Act of 1949, as amended, Section 106 (g), Act of September 23, 1959, 73 Stat. 674, U.S.C. Title 42 (Supp. IV, 1963), § 1456(g):

> "(g) No provision permitting the new construction of hotels or other housing for transient use in the redevelopment of any urban renewal area under this title shall be included in the urban renewal plan unless the community in which the project is located, under regulations prescribed by the Administrator, has caused to be made a competent independent analysis of the local supply of transient housing and as a result thereof has determined that there exists in the area a need for additional units of such housing."

QUESTIONS PRESENTED

1. Does Section 106(g) of the Housing Act, adopted in 1959, require a survey of need prior to the construction of an eight-story hotel which was first proposed to be constructed after the adoption of Section 106(g), even though an urban renewal plan approved prior to the statute incidentally listed "Hotel" among several two-story structures that might possibly be built?

2. When Congress added Section 106(g) to the Housing Act of 1949, requiring urban renewal agencies to secure a competent, independent analysis of the local supply of transient housing, did Congress intend thereby to prohibit the construction of hotels thereafter proposed in all urban renewal areas in the absence of such an analysis?

3. Did Congress add Section 106(g) to the Housing Act of 1949 for the benefit and protection of petitioners and other hotels so that petitioners have standing to obtain judicial review of respondent's disregard of the procedure established by Section 106(g), serious and irreparable injury to them being conceded?

STATEMENT

Petitioners, three corporations owning and operating hotels in Pittsburgh, Pennsylvania,[1] brought suit in the United States District Court for the District of Columbia against respondent, Administrator of the Housing and Home Finance Agency,[2] to enjoin re-

[1] Hilton Hotels Corporation owns and operates the Pittsburgh Hilton Hotel; Allegheny Hotel Corporation owns and operates the Pick-Roosevelt Hotel; Sheraton Mid-Continent Corporation owns and operates the Penn-Sheraton Hotel.

[2] Suits against the Administrator are authorized by Section 106(c)(1) of the Housing Act of 1949, 63 Stat. 418 (1949), 42 U.S.C. § 1456(c)(1).

spondent from continuing his approval of the Government-subsidized construction of a hotel in a Pittsburgh urban renewal area. The gravamen of the action is that respondent concededly has failed to observe the statutory requirement that an independent survey be made demonstrating a need for new hotel rooms before authorizing the construction of a hotel in an urban renewal area. It was alleged in the complaint and admitted for present purposes that petitioners will be seriously and irreparably injured by the respondent's action in failing to cause the survey to be made.

In June, 1955, the Pittsburgh City Planning Commission prepared an urban renewal plan[3] for the redevelopment of part of the Lower Hill District of the City of Pittsburgh, an area adjacent to the central business district of the city, where petitioners' hotels are located. The plan, merely a tentative outline of possible development, consisted of a map and accompanying text.

The map showed the boundary lines of the project and proposed and existing cross streets. Parts of the map were cross-hatched in different designs to indicate, according to a key, "parking," "residential," "cultural, recreational, educational," and "commer-

[3] This plan was originally known as a "Redevelopment Area Plan" but it will be referred to herein as the "urban renewal plan" or the "renewal plan." Section 110 of the Housing Act of 1949, 63 Stat. 420 (1949), originally provided for a "Redevelopment Plan." This section was subsequently amended by § 311 of the Housing Act of 1954 to provide for an "Urban Renewal Plan" 68 Stat. 626 (1954), as amended, 42 U.S.C. § 1460(b). The differences between the definitions of "Redevelopment Plan" and "Urban Renewal Plan" are not significant for present purposes and the phrase "Urban Renewal Plan" conforms to present usage under the Act.

cial" areas. One area of several acres, bore the "commercial" design and was bisected by a 60-foot wide thoroughfare named Chatham Street.

In the text of the plan accompanying the map the land use labeled "commercial" was defined as follows: "(a) The permitted land uses and buildings shall be the following: Automobile sales agency; Art and antique shop; Business College or Private School; Financial Institution; Hotel; Interior decorating shop; Library; Museum; Music conservatory or studio; Office, business or professional; Radio or television broadcasting station (without tower); Restaurant; Studio, artist; Theatre or Cinema; Wholesale merchandise establishment or brokerage, and accessory uses and buildings for any of the foregoing.". (The definition was apparently a standard clause used in plans prior to the adoption of Section 106(g) in 1959).[4]

The inclusion of the word "Hotel" in this list between "Financial Institution" and "Interior decoratting shop" was the *only* reference to hotels in the entire plan.

On the spot where it is now proposed to build an eight-story hotel, the plan limited the height of any building to be constructed to "two stories or twenty feet," and described a 60-foot wide thoroughfare known as Chatham Street. Section J of the plan ex-

[4] The entire plan with its maps and modifications is a voluminous document and is not part of the record herein. Pertinent parts of the plan were lodged with the court below, with the leave of the court. There is no factual dispute about the contents of the plan. The plan is a public document. If a trial is had, petitioners will offer the plan in evidence. But for present purposes, the Court is requested to take judicial notice of the portions of the plan quoted herein.

pressly made it a condition of the plan that it could be modified "at any time" upon approval of the city, the planning commission and the redevelopment authorities.

The renewal plan was approved by the Urban Redevelopment Authority of Pittsburgh (hereafter referred to as the "Authority") and submitted to the Housing and Home Finance Agency as part of an Application for Loan and Grant Contract. In October, 1955, a Loan and Grant Contract was entered into between the Authority and HHFA. The contract approved the renewal plan and expressly contemplated that changes in the plan would be made from time to time.

On September 23, 1959, § 106(g) was added to the Housing Act. 73 Stat. 674, 42 U.S.C. § 1456(g) (Supp. IV, 1963). Consistent with the fundamental purpose of the entire Act, which is to assist sound permanent housing for *residential* use, Section 106(g) was intended to prohibit the construction of hotels in federally subsidized urban renewal areas, except where the project community, under regulations prescribed by the Administrator, "has caused to be made a competent independent analysis of the local supply of transient housing and as a result thereof has determined that there exists in the area a need for additional units of such housing."

At no time prior to the addition of § 106(g) to the Housing Act had any negotiations, planning, financing commitment, agreement or option to construct a hotel on any of the property within the renewal plan been undertaken by the Authority.

The renewal plan was modified by Modification No. 1 on March 4, 1957, reducing the width of Chatham

Street from 60 to 44 feet. On September 27, 1960, more than a year after the enactment of § 106(g), the plan was again modified so that Chatham Street was entirely removed from the site of the now-proposed hotel. The two-story height restriction on all buildings at the site of the now-proposed hotel has not yet been modified or removed.

In November, 1960, more than a year after the enactment of § 106(g), two private developers on behalf of themselves and the Golden Triangle Motor Hotel Corporation (subsequently organized by them) made an offer to the Authority for a six-month option to enter into a ninety-nine-year lease for the purpose of redeveloping part of the area with an eight-story motor hotel. Under the offer the hotel will derive important competitive advantages because the cost of the land will be partially underwritten with federal urban renewal funds and because no money is to be paid by the hotel corporation until two years after the exercise of the option. The corporation is to have free use of the land for the first two years. Thereafter, a stated rent is to be paid with the corporation having the right to purchase the parcel at a stated price at any time during the ninety-nine-year term of the lease.

The Authority accepted the offer in December, 1960, and in June, 1961, a Contract for Disposition was signed by the Authority and the Golden Triangle Motor Hotel Corporation granting the corporation the six-month option it requested.

At no time did respondent direct the Authority to make an analysis of the need or lack of need for new hotels in the area as required by § 106(g), nor has such an analysis in fact been made. It was alleged

in the Complaint, and admitted for present purposes, that if such analysis had been made it would have shown that at all times there has existed a surplus of hotel rooms in Pittsburgh.

Notwithstanding that the Authority had failed to make the required analysis of the need for new hotels in the area, on November 20, 1961, the respondent approved the contract for disposition between the Authority and the Golden Triangle Motor Hotel Corporation.

At least as late as the decision of the court below, no construction whatsoever had yet begun on the proposed hotel.

HISTORY OF THE LITIGATION

(a) Pittsburgh Suit

Petitioners and other corporations owning hotels in Pittsburgh, brought suit in the United States District Court for the Western District of Pennsylvania against the Urban Redevelopment Authority of Pittsburgh, the City of Pittsburgh, the Golden Triangle Motor Hotel Corporation and the two private developers to enjoin *the construction* of the proposed hotel.

Respondent was not subject to service of process in the suit and was not a party therein. Respondent was, of course, apprised of the suit and could have appeared in it but did not do so, although repeatedly requested to do so by the plaintiffs in that case.

The District Court dismissed the complaint and the United States Court of Appeals for the Third Circuit affirmed, holding that the plaintiffs there lacked standing to maintain the suit. Moreover, the court stated that even if plaintiffs had had standing to sue, § 106 (g) would not be applicable because it applied only

to hotel *provisions* included in renewal *plans* approved after 1959, whereas prior to 1959, the listing of the word "Hotel" among several possible land uses in the Pittsburgh renewal plan constituted a "provision permitting the new construction of hotels." *Certiorari* was requested and denied by this court on February 18, 1963.[5]

(b) The Present District of Columbia Suit

On February 5, 1963, petitioners filed suit in the District Court for the District of Columbia to enjoin the respondent from *continuing his approval* of the unlawful Government-subsidized construction of the

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[5] The questions presented by the petition for certiorari were distinctly different from the questions presented herein. They were as follows:

"1. Did the local redevelopment authority obtain a contractual right against the United States by reason of approval by a federal agency of an over all redevelopment plan which listed as one of the possible future uses for part of the area designated commercial as 'a hotel', which contractual right could not be effected legally by a later congressional amendment which prohibits a hotel from being constructed unless the community obtains a competent independent analysis of the local supply of transient housing and determines that there is a need for such construction and, where, after the amendment and without obtaining any such analysis, the authority amended its plan to make the area commercial by vacating a street and converting street area into commercial and rezoning height restrictions and entered into a contract for construction of a hotel on said property when no negotiations, planning, financing, commitment, agreement or option to construct said hotel had been entered into prior to the amendment?

"2. Does not the action of the Court of Appeals in affirming an order dismissing the complaint but rendering no decision as to the summary judgment appealed by petitioners create such special circumstances as could be prejudicial to petitioners in later proceedings based on the cause of action so that the decision of the Court of Appeals should be considered as an appealable order and the writ of certiorari granted?" Petition for Writ of Certiorari, p. 3. *Hilton Hotels Corp. v. Urban Redevelopment Authority of Pittsburgh*, No. 761, October Term 1962.

hotel in the Pittsburgh urban renewal area.[6] It was alleged in the complaint, that § 106(g) required a survey of need prior to the authorization of the construction of the hotel in a federally subsidized urban renewal area; that this survey had not been made; that at all times a surplus of hotel rooms existed in the Pittsburgh area, and that petitioners would be seriously and irreparably injured by respondent's unlawful action.

The District Court, citing only the prior Third Circuit decision, granted respondent's motion to dismiss on the ground that "the Court lacks jurisdiction of the subject matter in that plaintiff's lack standing to sue." (App. B, p. 2a) On appeal, the Court of Appeals for the District of Columbia Circuit affirmed. But the court below did not adopt the Third Circuit's view of the law; it did not expressly decide that petitioners lacked standing to maintain the suit.[7] Rather

[6] None of the defendants in the Pittsburgh litigation is a party to this action.

[7] Nor did it rule that petitioners were in any way estopped from maintaining the suit. Respondent's refusal to participate as a party in the Third Circuit litigation prevents him from obtaining any benefit from the Third Circuit decision. According to the Restatement of Judgments, § 93, it is a general rule that a "person who is not a party or privy to a party to an action in which a valid judgment other than a judgment in rem is rendered . . . (b) *is not bound by or entitled to claim the benefits of an adjudication upon any matter decided in the action.*". This Court has repeatedly affirmed the long standing Restatement rule, considering it to be "a principle of general elementary law" that one not bound by a prior judgment may not use it to estop a claim. *Bigelow* v. *Old Dominion Copper Mining & Smelting Co.*, 225 U.S. 111 at 127 (1912); *Lawlor* v. *National Screen Service Corp.*, 349 U.S. 322 (1955); *United States* v. *Pink*, 315 U.S. 203 (1942); *Keokuk & W. R. Co.* v. *Missouri*, 152 U.S. 301 (1894). This is also the rule in the District of Columbia. *General Heating Engineering Co.* v. *District of Columbia*, 301 F. 2d 549 (D.C. Cir. 1962).

it ruled that "the interests of comity and the orderly administration of justice" required that it "not attempt to reexamine the matters considered and resolved by the Third Circuit." (App. A, pp. 1a-2a). The court below affirmed the order dismissing the complaint, without examining petitioners' contentions that respondent's approval of the construction of a hotel in a federally subsidized urban renewal area, where admittedly a surplus of hotel rooms existed, was directly contrary to the mandate of § 106(g) of the Housing Act.

REASONS FOR GRANTING THE WRIT

I

The court below has decided an important question of federal law which has not been, but should be, settled by this Court, and has decided a federal question in a way in conflict with applicable decisions of this Court and the United States Court of Appeals for the Second Circuit.

a. The Issue Is Important Because of the Great Number of Urban Renewal Projects That May Be Affected

The general policy of all the federal housing acts is to promote the construction of permanent residences, not hotels. Hotel construction is limited under all housing programs administered by respondent and the HHFA. "[T]he basic purpose of the various Government-assisted housing programs" according to Congress, "is to assist sound permanent housing for

residential use."[*] Specifically, Title 1 of the Housing Act of 1949 which governs federal urban renewal, and under which this case arises, expressly limits commercial construction in urban renewal areas and dictates that "financial assistance shall not be extended . . . with respect to any urban renewal area which is not predominantly residential in character and which is not to be redeveloped for predominantly residential uses." 70 Stat. 1097 (1956), as amended, 42 U.S.C. § 1460(c).

This policy was reaffirmed in 1959 by the passage of Section 106(g) requiring a survey of need as a pre-

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[*] For example, the National Housing Act, relating to FHA mortgage insurance, contains the following provision:

> "The Congress hereby declares that it has been its intent since the enactment of the National Housing Act that housing built with the aid of mortgages insured under that Act is to be used principally for residential use; and that this intent excludes the use of such housing for transient or hotel purposes while such insurance on the mortgage remains outstanding." (68 Stat. 610 (1954), 12 U.S.C. § 1731b(a)).

See also e.g., *FHA* v. *The Darlington, Inc.*, 358 U.S. 84 (1958); H.R. Rep. No. 2359 of the House Committee on Banking and Currency on S. 4035, the Housing Act of 1958, 85th Cong., 2d Sess., 33, 40 (1958):

> "Your committee wishes to call attention to previous declarations by the Congress that the basic purpose of the various Government-assisted housing programs is to assist sound permanent housing for *residential* use. Your committee wishes to reaffirm its intention that the prohibition against transient or hotel use is applicable to all housing programs, whether of an insurance or a loan category, and authorized within the various programs under the Housing and Home Finance Administrator." (Emphasis in original.)

condition to the building of hotels in urban redevelopment projects.[9]

The court below has refused to give effect to this policy of the Congress. That it has done so by an erroneous application of the supposed doctrine of comity is of no consequence. What is of consequence is that the very court in which action in violation of Congressional policy is most likely to be challenged has now effectively defeated the policy of Congress in an important area of legislation.[10]

This decision is, of course, much more consequential than the decision of the Third Circuit in the prior litigation, where a purely local issue was raised, where the Housing Administrator was not a party, and where his authority was not directly challenged.

The decision of the court below not only condones a violation of the rights of the present petitioners in Pittsburgh, but it will also undoubtedly frustrate the declared Congressional policy in a great many other communities throughout the land. Although no statistics are available as to precisely the number of urban renewal plans which correspond exactly to the Pittsburgh plan, it appears that several hundred communities may be affected by the ruling below.

The annual reports of the Housing and Home Finance Agency show that out of a total of 689 urban

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[9] The circumstances leading to the enactment of Section 106(g) are detailed, *infra*, pp. 18-20, 22-24.

[10] Indeed, at the time of the Pittsburgh litigation here involved and until the amendment of § 1391(e) of the Judicial Code, 28 U.S.C. § 1391(e) (Supp IV 1962) on October 5, 1962 it was the only circuit in which litigation could be brought. The practical effect of § 1391(e) in making other courts available is not yet clear.

renewal plans approved at the time of the enactment of Section 106(g), only 26 had been completed. 365 such plans were, like the Pittsburgh plan, "In execution" and 298 plans remained wholly unexecuted, and "In planning."[11]

As late as 1962, according to the HHFA Annual Report, only 86 approved plans had been completed. Most of the remaining hundreds of plans "In execution" and "In planning" will be affected by the decision below. For it appears to have been the usual practice, at least prior to the enactment of § 106(g), to include in each urban renewal plan, as in the Pittsburgh plan, a reference to hotels in the boiler-plate authorization for incidental commercial construction.[12] Each of the presumably several hundred plans containing this authorization raises precisely the same problem presented by the Pittsburgh plan.

The figures of the HHFA report show that in most cases it is many years between the approval of a renewal plan and the commencement of execution. Yet the decision of the Third Circuit, which the court below refused to reexamine, emphasizes only the date of approval of the renewal plan and regards this as

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[11] 16th Annual Report, HHFA, Table VII-2, p. 295 (1962).

[12] There are no published statistics of the Housing and Home Finance Agency on the exact number of plans approved prior to 1959 containing the boiler-plate reference to hotels or the number of communities in which hotel construction may now or later be contemplated. It is therefore not possible to state exactly how many of the 663 communities having approved plans in 1959 in the stage labelled "In planning" or like Pittsburgh "In execution" are affected by the decision below. It seems clear, however, that if not all of such plans then at least a large proportion of them are so affected.

the crucial point. Thus, as in the instant case, if a plan has been approved prior to the enactment of Section 106(g), even with the most rudimentary reference to the prospect of building a hotel, there is no requirement of a survey of need before actually building the hotel. This applies even though in any particular community the consideration of whether a hotel should be built under the approved plan may still today be many years in the future.

Such a ruling, of course, unduly emphasizes the significance of the approval of the plan. For an urban renewal plan, as approved, is no more than a generalized statement of goals as they exist from time to time, sufficient only in details and objectives to warrant the commitment of federal funds. Precise building plans are never a part of the plan at this stage. For example, no one examining the Pittsburgh plan when it was approved in 1955 could possibly have guessed that the hotel now proposed could be built in the area.[13] Significant detailed planning by the local renewal agency and private developers begins only *after* HHFA approval of the tentative plan and the commitment of funds. Actual execution of the plan does not commence until a long time later.

The statistics of the HHFA Annual Report, *supra*, establish clearly that the approval of a renewal plan

[13] The hotel now proposed is not one which might have been built under the plan as it existed prior to the enactment of § 106 (g). The proposed hotel will contain eight stories and will be built on the former site of Chatham Street. But it is evident that until the plan was modified in September, 1960, the area now considered for the proposed hotel comprised a 60-foot wide thoroughfare on which nothing could be built. The two-story height restriction on all buildings in the urban renewal area still has not been removed from the plan.

for a project is only the first step. Thereafter the project enters the stage headed: "In planning." It is only after planning has been completed that the project enters the stage called: "In execution." The figures for 1959 have been shown above. Earlier figures may make this clearer. In the year 1955, for example, 340 urban renewal plans had been approved. Of these, 230 were "In planning", 110 were "In execution," and *none* had been completed."

The Pittsburgh Urban Renewal Plan was approved in 1955, and subsequently modified very substantially. The hotel now authorized was not proposed until 1960. It was not contracted for until 1961. At least as late as the decision of the court below, nothing had been done towards its construction. Nevertheless, the court below has ruled that the proposed construction is not subject to the remedial restrictions of the statute passed more than four years ago. This decision denies the statute practical effect even as to the great mass of construction planned for the first time long after the passage of § 106(g). To give effect to the Congressional policy announced in 1959, the time of approval of the basic underlying plan must be disregarded so that every hotel project not previously contracted for should be subject to the requirement of a survey.

Only this will avoid a misdirection of federal funds allocated for residential housing. As of 1962, the federal government had reserved and outstanding obligations in the amount of $3,014,314,096 for a total of 1,210 urban renewal projects in various stages of planning or execution.[15] If the decision of the court below

[14] 16th Annual Report, HHFA, Table VII-2, p. 295 (1962).

[15] *Ibid.*

is allowed to stand, a not insubstantial portion of these federal funds intended to provide decent residential housing for people in blighted areas will end up subsidizing the construction of luxury hotels. As a result, petitioners and other hotels will face destructive competition from subsidized hotels, surplus and unneeded, which Congress, in enacting § 106(g) clearly intended to prevent.

b. In Enacting the Survey Procedure of § 106(g) Congress Intended to Remedy an Existing Evil and to Conserve Federal Funds for Residential Housing by Preventing the Construction of Unneeded Hotels in Urban Renewal Areas

The fact that the court deciding this issue is the principal one having jurisdiction over the Housing and Home Finance Administrator, and the importance of the Congressional policy which is frustrated here make it further appropriate that this Court grant review.

The history of Section 106(g) clearly establishes the importance which Congress attaches to Section 106(g) and the policy embodied therein.

The declarations of Congressional intent to limit commercial construction set forth above (pp. 11-12) seemed clear. Nevertheless, in *Taft Hotel Corp.* v. *HHFA*, 262 F. 2d 307 (2d Cir. 1958), *cert denied*, 359 U.S. 967 (1959) the Court of Appeals for the Second Circuit refused to prohibit the construction of a large hotel in a federally subsidized urban renewal project and dismissed the complaint of a competing hotel on grounds of standing.

The *Taft* case was decided on December 31, 1958. The following May the Chairman of the House of Rep-

resentatives' Subcommittee on Housing introduced an amendment to the Housing Act in an obvious attempt to correct legislatively the result reached in the *Taft* case. In four months the bill was enacted into law as § 106(g).

It was clearly the intent of Congress in § 106(g) to prevent the *construction* of *unneeded* hotels in federal urban renewal areas by conditioning respondent's approval of such hotel construction on proof of actual need. This proof was to be in the form of a "competent independent analysis of the local supply of transient housing [showing] that there exists in the area a need for additional units of such housing." This intent is unmistakably revealed by the comments of those most responsible for the legislation:

(1) Congressman Albert Rains, Chairman of the Subcommittee on Housing of the House of Representatives submitted § 106(g) as a floor amendment,[16] stating that it would require:

> "a survey to be made before a new hotel could be *built* in an urban renewal area."[17]

(2) The Senate Conference Committee in accepting § 106(g), reported that it would:

> "prohibit hotels and other transient housing from being *constructed* in an urban renewal area unless the community obtains a competent independent analysis of the local supply of such housing

[16] The provisions which now appear as § 106(g) were inserted into the first housing bill considered by Congress in 1959 and were carried along with only minor modification in every subsequent proposed bill until enacted. The comments printed herein are thus references to sections in various proposed bills all of which are identical to § 106(g) as enacted.

[17] 105 Cong. Rec. 8815 (May 21, 1959). Emphasis added through brief unless otherwise stated.

and determines that there is a need for such housing." [18]

(3) Even the Housing and Home Finance Agency, in a contemporaneous construction of § 106(g) as it appeared in various bills then under consideration, stated that it:

> "Prohibits *construction* of hotels and transient housing without certain prior analysis." [19]

(4) Both the Senate and House Committee reports stated that the purpose of the survey provision was to:

> "Prohibit hotels and other transient housing from being *constructed* in an urban renewal area unless the community obtains a competent independent analysis of local supply of such housing and determines that there is a need for such housing." [20]

The unambiguous legislative history of § 106(g) proves beyond question that Congress intended to amplify the long standing policy of the housing acts by preventing *construction* of hotels in all federally subsidized urban renewal areas, unless a survey of the area specifically indicated a need for additional hotels. The act was intended to remedy existing abuses of the urban renewal program. It was to apply prospectively, but immediately, and to require such a survey

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[18] Sen. Rep., Section-by-Section Summary of the Provisions of S. 57 as Agreed to in Conference, Committee Print, Senate Committee on Banking and Currency, 86th Cong., 1st Sess., 11 (1959).

[19] "Housing and Home Finance Agency, Comments on Numbered Items in Agenda of Senate Committee on Banking and Currency Relating to Housing Act of 1959 (S. 57, S. 612, S. 2378, 86th Congress)." IV-3 (July 23, 1959).

[20] Sen. Rep. No 715, 86th Cong., 1st Sess, 20 (1959); H.R. Rep. No. 1040, 86th Cong., 1st Sess., 18 (1959).

as a precondition to all future hotel constructions. It is this elementary survey which respondent has failed to procure in the instant case, and which, if made, admittedly would indicate that a surplus of hotels exists within the Pittsburgh area.

c. The Lower Court's Reliance on Comity Does Not Affect the Importance of the Issue

The Third Circuit used language, be it dictum or holding, which indicated that § 106(g) should be interpreted literally so as not to be applicable to previously approved plans containing the "commercial" boiler-plate reference to a hotel. We believe that fairly construed, the 1955 Pittsburgh renewal plan did not contain a "provision permitting the new construction of hotels." But beyond that, the Third Circuit's reading of the statute, to regulate only the inclusion of *provisions* for hotels in urban renewal *plans* inflates a technicality and exalts text over context. Congress was not promoting urban renewal *plans*, but rather urban *renewal*; it was not concerned with *provisions* for hotel construction, but with hotel *construction*.

The Third Circuit itself conceded that the application of the safeguard of § 106(g) which the plaintiffs there requested would have been "wise", but stated that it had been presented with no legislative history to support the "wise" position.[20a] That legislative sup-

[20a] The court stated: "Although the subsection requiring a survey does not specifically restrict the words 'no provision' to future ones only, and it might be wise to employ the safeguard of that subsection here, in the absence of reliable indicia showing a Congressional intent that the words include past approved ones, the subsection is not to be applied retroactively, that is applied to urban renewal plans containing a provision permitting the construction of a transient housing unit which had been approved before the effective date of the 1959 Act." (App. C, p. 10a).

port was abundantly presented in the court below, and some of it is cited herein, pp. 18-20, *supra*. It would thus have been difficult if not impossible for the Court of Appeals for the District of Columbia Circuit to agree with the views of the Third Circuit with the Housing Administrator before it and in the face of the clear legislative history presented. But the court did not reach the merits, accepting instead the Third Circuit's language on the basis of comity rather than independent agreement. We believe there was no basis for the application of comity and the court below did not pay appropriate regard to its special position as the principal court having jurisdiction over the Government official whose action was challenged. But even if we assume the decision properly to have accorded comity to the Third Circuit decision, this Court should now take up the matter and establish the law lest "the indiscreet action of one court . . . become a precedent, increasing in weight with each successive adjudication, until the whole country [is] tied down to an unsound principle." *Mast, Foos & Co.* v. *Storer Mftr. Co.*, 177 U.S. 485, 488 (1900). As this Court has stated, "comity comes in play and suggests a uniformity of ruling to avoid confusion, *until a higher court has settled the law.*" (*Id.* at 488-489).

The pattern revealed by this case is similar to that of a great many other urban renewal projects approved before enactment of Section 106(g) in 1959, and not yet completed. The considerations are the same whether the urban renewal plans involved are, in the words of the HHFA table, still "In planning" or whether they are, as the Pittsburgh plan, "In execution".

It is imperative at this early juncture in the development of the federal urban renewal program that this Court settle the law and compel respondent to honor the intent of Congress by assisting the creation of residential housing, not hotels. This Court should pronounce authoritatively whether the HHFA, despite the long standing Congressional policy and the clear intendment of § 106(g), is free at will to finance surplus hotel construction that will compete with existing adequate facilities in the great number of communities affected by the decision below, or whether it must obey Congress's demand for a prior independent survey of need in such cases.

II

THE RULING ON STANDING TO SUE PRESENTS A CONFLICT WITH RULINGS OF THIS COURT AND THE COURT OF APPEALS FOR THE SECOND CIRCUIT

The court below affirmed the order of the District Court dismissing the complaint "on the ground that the court lacks jurisdiction over the subject matter in that plaintiffs lack standing to sue." (App. B, p. 3a). This decision, we submit, is in conflict with the decision of this Court in *Texas & Pac. Ry. Co.* v. *Rigsby*, 241 U.S. 33, 39 (1916), and with the decision of the United States Court of Appeals for the Second Circuit in *Garl* v. *Cole*, 263 F. 2d 244 (2d Cir.), *cert. denied*, 359 U.S. 978 (1959). For the ruling below denies judicial review to those who are admittedly injured by respondent's disregard of a procedure inserted into the Housing Act for their especial protection.

Section 106(g) mentions only hotels, and its terms alone would indicate that it was intended to benefit

and protect hotels. That is the fact. In 1956,[21] in 1958,[22] and again after the *Taft* case in 1959,[23] representatives of the American Hotel Association described to Congress the industry problems resulting from the subsidized construction of surplus hotel rooms. It was pointed out that a hotel is essentially a single-purpose building, so that, unlike other commercial establishments, it cannot be used in a variety of ways depending on competition and need. The hotels petitioned for some form of protection under the Housing Act, and suggested the survey requirement that became § 106(g).

It cannot be denied that petitioners are among the class for whose especial benefit § 106(g) was passed. Indeed, HHFA has repeatedly recognized this to be

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[21] Hearings on H.R. 10157, The Housing Act of 1956 before the House Committee on Banking and Currency, 84th Cong., 2d Sess., 432, 434 (May 18, 1956).

[22] Hearings on the Housing Act of 1958 before the Subcommittee on Housing of the House Committee on Banking and Currency, 85th Cong., 2d Sess., 740 (1958); Hearings on Various Bills to Amend the Federal Housing Laws before a Subcommittee of the Senate Committee on Banking and Currency, 85th Cong., 2d Sess., 451 (1958).

[23] Hearings on the Housing Act of 1959 before the Subcommittee on Housing of the House Committee on Banking and Currency, 86th Cong., 1st Sess., 705 (1959); Hearings on Various Bills to Amend the Federal Housing Laws before the Senate Committee on Banking and Currency, 86th Cong., 1st Sess., 754 (1959); Hearings on the President's Message Disapproving S. 57, The Housing Act of 1959 before a Subcommittee of the Senate Committee on Banking and Currency, 86th Cong., 1st Sess., 577 (1959).

the fact.[24] Admittedly, too, petitioners will suffer serious and irreparable injury as a result of respondent's unlawful conduct. Thus, all the requirements of standing to obtain judicial review are present. For this Court stated in the *Rigsby* case, that a "disregard of the command of the statute . . . [which] results in damage to one of the class for whose especial benefit the statute was enacted" is grounds for judicial review. (241 U.S. at 39). Yet the court below has rendered a decision completely contrary to this rule.

Moreover, insofar as it deprives petitioners of judicial review of respondent's noncompliance with Housing Act procedures, the decision below also conflicts with the decision of the Court of Appeals for the Second Circuit in *Gart* v. *Cole*, 263 F. 2d 244 (2d Cir.), *cert. denied*, 359 U.S. 978 (1959). In the *Gart* case, property owners and business tenants displaced by an urban renewal project claimed the right to a hearing before respondent on the feasibility of the relocation plan. The Second Circuit held that the appellants there "*do have standing in this action* to challenge the Administrator's refusal to grant them an oral hearing on the feasibility of the City's relocation plan." (263 F. 2d at 250).

Thus, in its refusal even to examine petitioners' contentions, the court below has rendered a ruling con-

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[24] Attachments to Items in Conference Agenda, Supplemental Statements of HHFA on Administration Positions, Agenda Item No. 48, "Special Provisions to Restrict Hotel Construction on Urban Renewal Sites," (June 1959); Statement of Robert C. Weaver, Administrator, Housing and Home Finance Agency, Hearings before the Subcommittee on Housing of the House Committee on Banking and Currency, 87th Cong., 1st Sess., 44 at 126 (April 24, 1961).

trary to the decisions of this Court and the Second Circuit, and has denied petitioners the judicial review to which they are entitled.[25]

The decision below will profoundly affect the growth and direction of our country's urban renewal program. It also affects the ability of respondent, an administrative officer who commands vast power and wealth, to escape the restraint of judicial review. It is manifestly important that the law concerning respondent's power to approve and subsidize hotel construction in urban renewal areas be authoritatively settled.

CONCLUSION

For the foregoing reasons, a writ of certiorari should be granted.

Respectfully submitted.

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Dated: January 28, 1964.

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[25] Petitioners stress the fact that they asked the court below to compel respondent to comply with a simple *procedure* required by statute. Petitioners did not ask the court to review an intricate *substantive* decision made by respondent in the exercise of his administrative discretion. The distinction between standing to enforce statutory procedures and standing to review substantive decisions was drawn by respondent in another case in an attempt to defeat plaintiff's claimed right to judicial review of a substantive decision. Respondent there acknowledged that strong arguments exist in favor of recognizing standing to compel compliance with a statutory *procedure*. HHFA Brief in Opposition to Petition for Certiorari, p. 13, *Harrison-Halsted Community Group* v. *HHFA*, No. 861, October Term, 1962.

APPENDIX

APPENDIX A

Opinion of the Court of Appeals in the Instant Case

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 17,987

HILTON HOTELS CORPORATION, ET AL., APPELLANTS

v.

ROBERT C. WEAVER, Administrator of the Housing and Home Finance Agency, APPELLEE.

Appeal from the United States District Court for the District of Columbia

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Decided November 18, 1963

Before WASHINGTON, BASTIAN and WRIGHT, Circuit Judges.

PER CURIAM: This case raises issues of fact and law virtually identical to those which were considered by the Court of Appeals for the Third Circuit in *Pittsburgh Hotels Association, Inc.* v. *Urban Redevelopment Authority of Pennsylvania*, 309 F.2d 186 (1962), cert. denied, 372 U.S. 916 (1963). The parties there were substantially the same as those now before us, though relief here is sought against a Federal official, and there was sought against private parties and state officials. If the present appellants had obtained in the Third Circuit the relief they there sought, the controversy would have been effectively concluded. We are satisfied that in the interests

of comity and the orderly administration of justice[1] we should not attempt to reexamine the matters considered and resolved by the Third Circuit, a court having authority equal to our own. The order of the District Court, dismissing the complaint, will therefore be

Affirmed.

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[1] We need not decide whether the principles of res judicata and collateral estoppel operate to prevent a plaintiff from raising issues against a defendant who was not a party in a previous litigation in which plaintiff unsuccessfully raised the same issues. We decide only that where a prior decision against the plaintiff on the same issues he raises in the instant case would necessarily be frustrated or obstructed by a present decision in the plaintiff's favor this court will not interefere with the prior decision adverse to the plaintiff.

APPENDIX B

Order of the District Court in the Instant Case

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Civil Action No. 317-63

HILTON HOTELS CORPORATION
ALLEGHENY HOTEL CORPORATION
SHERATON MIDCONTINENT CORPORATION, *Plaintiffs*

v.

ROBERT C. WEAVER, Administrator of the
Housing and Home Finance Agency, *Defendant*

Order

The motion of defendant to dismiss this action came on to be heard by the Court on April 23, 1963. After a consideration of the written memoranda and oral arguments of counsel, and for the reasons fully set forth in the case of *Pittsburgh Hotels Ass'n, Inc.* v. *The Urban Redevelopment Authority of Pittsburgh*, 309 F.2d 186 (3rd Cir.

1962), a case involving the same facts and legal issues as are present in the instant case, it is by the Court this 24th day of April, 1963,

ORDERED, That the motion of defendant to dismiss on the ground that the court lacks jurisdiction over the subject matter in that plaintiffs lack standing to sue, be and the same is hereby granted.

/s/ LUTHER W. YOUNGDAHL
Judge

APPENDIX C

Opinion of United States Court of Appeals for the Third Circuit in Pittsburgh Hotels Association, Inc. v. Urban Redevelopment Authority of Pittsburgh

UNITED STATES COURT OF APPEALS
THIRD CIRCUIT

PITTSBURGH HOTELS ASSOCIATION, INC., a Pennsylvania Corporation; CARLTON HOTEL CORPORATION, a Pennsylvania Corporation; HILTON HOTELS CORPORATION, a Delaware Corporation; ALLEGHENY HOTEL CORPORATION, a Pennsylvania Corporation; PITTSBURGHER HOTEL COMPANY, a Pennsylvania Corporation; and SHERATON MID-CONTINENT CORPORATION, a Delaware Corporation, *Appellants*,

v.

THE URBAN REDEVELOPMENT AUTHORITY OF PITTSBURGH, a Pennsylvania Corporation, and LEON FALK, JR., JOSEPH S. WOHL and GOLDEN TRIANGLE MOTOR HOTEL, INC., a Pennsylvania Corporation, and the CITY OF PITTSBURGH, PENNSYLVANIA, *Appellees*.

GANEY, Circuit Judge.

Six plaintiffs, a hotel association and five corporations which own and operate hotels in Pittsburgh, Pennsylvania, brought an action allegedly under the Housing Act of

1949,[1] 63 Stat. 413, as amended, 42 U.S.C.A. § 1441 et seq., to enjoin Golden Triangle Motor Hotel, Inc., from erecting a hotel on a parcel of land in an officially designated redevelopment area in the City of Pittsburgh until that city "has caused to be made a competent independent analysis of the local supply of transient housing and as a result thereof determined that there exists in the area a need for additional units of such housing." The complaint avers that the plaintiffs' hotel business will be adversely affected by the operation of the proposed motor hotel since there is no need now or in the foreseeable future for such a unit in that area. The defendants are the Urban Redevelopment Authority of Pittsburgh ("Authority"), Leon Falk, Jr., Joseph S. Wohl, Golden Triangle Motor Hotel, Inc., and the City of Pittsburgh, Pennsylvania.[2]

On January 3, 1952, a contract between the United States, acting through the Federal Housing Administrator, and the Authority was executed. Under the terms of the contract the United States agreed to make an advancement not to exceed $71,700 to the Authority for the purpose of making surveys and plans in preparation for a redevelopment project in the City of Pittsburgh. Apparently, in accordance with the provisions of the Pennsylvania Urban Redevelopment Law of 1945, P.L. 991, as amended, 35 P.S. § 1701 et seq., the City Planning Commission of Pittsburgh completed a plan dated June 7, 1955, for the proposed redevelopment of an area in the Lower Hill district of the City. The area encompasses 46 city blocks and the project is designated as the Lower Hill Redevelopment Project Redevelopment Area No. 3 ("Proj-

[1] This statute was enacted to permit the Federal government to make grants and loans to aid municipalities in slum clearance and community redevelopment.

[2] Diversity of citizenship does not exist between all of the plaintiffs and all of the defendants.

ect"). The Plan divides the land into commercial, cultural, recreational, educational, residential, parking and open area, and designates the location of streets. Parcel "B" on the Plan contains approximately 5.3 acres abutting Fifth Avenue and Liberty Crosstown Thorofare. This parcel is designated for commercial use and had four streets running across it. One of them is named Chatham Street which was 60 feet wide and was to be used as a public thoroughfare.

The Plan contains a provision that the redeveloper shall devote the land to uses specified in the Plan for such area. The word "Hotel" is listed under the permitted buildings to be erected in the area designated as commercial.[3] Another provision limits the height of any building or structure to be constructed thereon to two stories or twenty feet. Part J of the Plan provides that "This Plan may be modified at any time upon approval of such modification by the Council of the City of Pittsburgh, the City Planning Commission of the City of Pittsburgh and the Urban Redevelopment Authority of Pittsburgh . . . ." The Plan was approved by Council of the City of Pittsburgh on July 13, 1955, by Ordinance No. 255.

On August 2, 1954, the Housing Act of 1949 was amended by the Housing Act of 1954, 68 Stat. 590, which authorized the establishment of an urban renewal fund and the grant of monies from that fund for certain specific purposes in accordance with the laws involved and the regulations of the Federal Housing Administrator. Section 312 of that Act, 68 Stat. 629, 42 U.S.C.A. § 1450 note, provides that the Administrator "with respect to any project covered by any Federal aid contract executed, or prior approval granted, by him under said title I before the effective date of this Act, upon request of the local public agency, shall

[3] Part F. 2b(2) (a) of the Redevelopment Area Plan for Redevelopment Area #3.

continue to extend financial assistance for the completion of such project in accordance with the provisions of said title I in force immediately prior to the effective date of this Act."

On October 11, 1955, the Authority entered into a grant and loan Contract with the United States. The Contract sets forth that "The purpose of the contract is to provide for the extension by the federal government to the Authority of financial assistance under the Housing Act of 1949, as amended prior to the enactment of the Housing Act of 1954, with respect to the project", and states the terms and conditions upon which such assistance will be extended and the understandings of the parties to the Contract as to the manner in which they contemplate that the Project will be undertaken and carried out. The Contract also provides that the Plan was satisfactory to the Federal Government, and recognized that amendments to the Plan would be made from time to time in conformity with applicable law and the provisions of the Contract, and that the Federal Government agrees to grant and loan money to the Authority to enable it to make Project land available for redevelopment for uses in accordance with the Plan. From time to time there were a number of waivers and amendments to the Contract, and several modifications to the Plan.

Amendments were made to both the Housing Act of 1949 and 1954 by the Act of September 23, 1959, 73 Stat. 654, known as the Housing Act of 1959. Section 410 of that Act; 42 U.S.C.A. § 1456(g), amended § 106 of the Housing Act of 1949, 63 Stat. 413, by adding the following subsection:

> "(g) No provision permitting the new construction of hotels or other housing for transient use in the redevelopment of any urban renewal area under this subchapter shall be included in the urban renewal

plan unless the community in which the project is located, under regulations prescribed by the Administrator, has caused to be made a competent independent analysis of the local supply of transient housing and as a result thereof has determined that there exists in the area a need for additional units of such housing."[4]

By Modification No. 2, approved by Council of the City of Pittsburgh on September 27, 1960, Chatham Street was removed from Parcel "B" of the Plan.

In November 1960, Leon Falk, Jr., and Joseph S. Wohl, private redevelopers, made a proposal to the Authority for a six month option to enter into a 99 year lease for the purpose of redeveloping Parcel "B" "with an eight-story motor hotel in excess of twenty feet in height." Later Falk and Wohl formed a corporation known as Golden Triangle Motor Hotel, Inc., for the purpose of exercising the option and developing the parcel of land in question. On June 8, 1961, a six month option contract was signed by the Authority and Golden Triangle Motor Hotel, Inc. The Federal Government has approved the proposed redevelopment of Parcel "B" by means of the construction of the motor hotel. Neither the City of Pittsburgh nor the Authority has caused to be made an independent analysis or a survey of the local existence of transient housing facilities for the purpose of determining the need for the proposed motor hotel.

On July 31, 1961, the six plaintiffs brought the action here involved. The above option was to have expired in November of 1961, but repeated extensions necessitated by the litigation have been granted. The Federal Government has consented to the extensions. On September 7, 1961, defendants moved for summary judgment on the

[4] Prior to this addition, there was no provision in the law requiring a preliminary survey with regard to urban renewal plans.

grounds that (1) plaintiffs had no standing to maintain the action, (2) that the statute relied upon by plaintiffs was not applicable, and if it were, that statute could not be applied constitutionally to this project. After a number of hearings, the District Court for the Western District of Pennsylvania on February 14, 1962, ordered that summary judgment be entered in favor of defendants and that the complaint be dismissed. 202 F.Supp. 486. From this order plaintiffs have appealed.

We agree that the dismissal of the complaint was proper. The Housing Act of 1949, as amended prior to the effective date of the Housing Act of 1959, did not give the plaintiffs standing to sue in this action.[5] Taft Hotel Cor-

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[5] Section 9 of the Pennsylvania Urban Redevelopment Law, 35 P.S. § 1709, provides: "An Authority shall constitute a public body, corporate and politic, exercising public powers of the Commonwealth as an agency thereof, which powers shall include all powers necessary or appropriate to carry out and effectuate the purpose and provisions of this act * * *:". Despite this broad language, the Supreme Court of Pennsylvania has ruled that: "The Redevelopment Authorities are purely administrative bodies enjoying no important power which is not subject to the approval of the city council or the county commissioners; the Authorities cannot independently exercise any municipal functions. Moreover, they are public bodies and not special commissions or private corporations within the meaning of the constitutional prohibition [of the Commonwealth]." See Belovsky v. Redevelopment Authority of Philadelphia et al., 357 Pa. 329, 343, 54 A.2d 277, 172 A.L.R. 953 (1947).

One of the items listed under § 9 as subsection (q) is "To sue and be sued." But giving consent to be sued does not confer jurisdiction upon a Federal district court over a controversy involving the Authority.

Plaintiffs do not claim that the Housing Act of 1949, as amended, is unconstitutional. They do not seek to restrain the enforcement of a Pennsylvania statute as being unconstitutional on its face (which would have required the convention of a three-judge statutory court), or seek to restrain the action of State officers who are enforcing a State statute in an unconstitutional manner. Nor do they assert that the enforcement of State law deprives them of due process of law or denies them the equal protection of the laws.

poration v. Housing and Home Finance Agency, 162 F. Supp. 538 (D.C. Conn. 1958), aff'd. per curiam 262 F.2d 307 (C.A. 2, 1958); Gart v. Cole, 166 F.Supp. 129 (D.C. S.D. N.Y. 1958), aff'd 263 F.2d 244, 250 (C.A. 2, 1958). Nevertheless, plaintiffs maintain that subsection (g) of § 410 of the Housing Act of 1959, 42 U.S.C.A. § 1456(g), by implication, if not in terms, gives them a standing to sue for the matters averred in the complaint. On the other hand, defendants argue that we need not consider the effect of that subsection because, as allowed by § 312 of the Housing Act of 1954, the Authority requested the Administrator to continue to extend financial assistance in accordance with the provisions of the laws in force immediately prior to August 2, 1954, and hence the Authority is not governed by and need not comply with the 1959 amendments. Even assuming that the granting of advancements for the preparation of the Plan, amounted to "prior approval granted" by the Administrator under § 312 of the 1954 Act, we need not rule whether such prior approval and the request by the Authority had the effect claimed by defendants,[6] because subsection (g) of § 410 does not, in our opinion, give plaintiffs a standing to sue in the action here involved. However, even if it did so, the subsection, by its terms, does not require that a survey be made before the proposed hotel may be built on that plot of ground designated as Parcel "B" on the

[6] Prior to its final passage, the proposed amendments had contained a provision directing the Federal Housing Administrator to amend existing contracts between the Government and the local urban renewal authorities in order to bring such contracts into conformity with changes set forth in the proposed amendments. Since the Committee on Banking and Currency understood that existing law permitted those contracts to be amended to incorporate the provisions of the proposed Act, the above proposed provision was deleted. See S.Rep. No. 924, Sept. 8, 1959, 86th Cong., 1st Sess., 1959 U.S.Code Cong. and Adm.News, p. 2846. Moreover, on this point the Federal Housing Administrator should be heard, but he is not a party to the action.

Plan. The subsection does not prevent all future new construction of hotels or other housing for transient use unless a survey is made. It simply provides that *no provision* permitting such construction shall be included in the *urban renewal plan* unless it is determined that there is a need for such construction after an independent survey of the local supply has been made. Although the subsection requiring a survey does not specifically restrict the words "no provision" to future ones only, and it might be wise to employ the safeguard of that subsection here, in the absence of reliable indicia showing a Congressional intent that the words include past approved ones, the subsection is not to be applied retroactively, that is applied to urban renewal plans containing a provision permitting the construction of a transient housing unit which had been approved before the effective date of the 1959 Act. This is the usual statutory interpretation. See Peony Park v. O'Malley, 223 F.2d 668, 671-672 (C.A. 8, 1955), cert. den. 350 U.S. 845, 76 S.Ct. 87, 100 L.Ed. 753. The requirement of a survey and a determination of the need for such transient housing unit applies only to urban renewal plans having no provision for that unit which had been approved prior to the effective date of the 1959 Act. Here, there is such a provision in the urban renewal Plan officially approved on October 11, 1955. This was almost 4 years before the effective date of the Housing Act of 1959.

Plaintiffs point out that under this interpretation of subsection (g) a hotel can be built, as may be the case here, many years after the approval of the original plan when the need for such unit will be much less than it was when the provision was approved. Conceding this to be a possibility it is also possible that the need may become greater. Additionally, a radical change in the facts developed by the survey may take place even if plaintiff's interpretation were to be the accepted one. Even though, after a survey, a determination is reached that there is

need for a hotel, between the time of that determination and the actual operation of that housing unit, the need for it may likewise disappear. Moreover, as time passes, the eventuality similar to that which the plaintiffs seek to prevent here will vanish. We think Congress was aware of this eventuality when it wrote subsection (g).'

That the Plan regarding Parcel "B" was changed after the effective date of the 1959 Act by the removal of a street upon which no structure was permissible and that the height of the proposed hotel will violate a restriction set forth in the Plan does not nullify the fact that a provision permitting the construction of a hotel existed prior to the effective date of the 1959 Act. Of course, any change, no matter how slight, in the Plan is *pro tanto* a modification of the Plan. But the paragraph allowing modification of the Plan at any time is part of the provision permitting the use of the land by the construction of a hotel thereon. A point may be reached where a modification of a provision will be such as to change the provision into a new one. The changing of land marked for residential use to commercial might be one example. At what point the transition occurs we need not determine here. Suffice it to say that we think that the removal of Chatham Street and the structural height restriction did not change the provision of the Plan into a new one.

The order dismissing the complaint will be affirmed.

'In the fall of 1957, the Subcommittee on Housing held extensive hearings in many parts of the country to develop information regarding urban renewal and low-rent housing programs. The Senate Report to the proposed legislation concerning the Housing Act of 1959 states: "During consideration of housing legislation in 1957, many members of the committee became alert to the need for projecting Federal participation in both those programs into future years on a sustained and predictable basis, and with emphasis upon *local* responsibility and autonomy." (Italics supplied.) See S.Rep. No. 924, 86th Cong., 1st Sess. (Sept. 8, 1959), 1959 U.S.Code Cong. and Adm.News, p. 2845.

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In the Supreme Court of the United States

OCTOBER TERM, 1963

No. 792

HILTON HOTELS CORPORATION, ET AL., PETITIONERS

v.

ROBERT C. WEAVER, ADMINISTRATOR OF THE HOUSING AND HOME FINANCE AGENCY

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

BRIEF FOR THE RESPONDENT IN OPPOSITION

OPINIONS BELOW

The order of the district court (Pet. App. 2a–3a) is not reported. The opinion of the court of appeals (Pet. App. 1a–2a) is reported at 325 F. 2d 1010.

JURISDICTION

The judgment of the court of appeals was entered on November 18, 1963. The petition for a writ of certiorari was filed on January 28, 1964. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTIONS PRESENTED

1. Whether the Housing Act of 1949, as amended, confers standing upon hotel owners to challenge the approval by the Housing and Home Finance Agency Administrator of a land disposition contract for the construction of a competing hotel within an urban renewal project area.

2. Whether Section 106(g) of the Housing Act of 1949, as amended, has application to urban renewal plans approved prior to the effective date of the Section.

STATUTE INVOLVED

Section 106(g) of the Housing Act of 1949, as added by Section 410 of the Act of September 23, 1959, 73 Stat. 674, 42 U.S.C. (Supp. IV) 1456(g) provides:

> No provision permitting the new construction of hotels or other housing for transient use in the redevelopment of any urban renewal area under this subchapter shall be included in the urban renewal plan unless the community in which the project is located, under regulations prescribed by the Administrator, has caused to be made a competent independent analysis of the local supply of transient housing and as a result thereof has determined that there exists in the area a need for additional units of such housing.

STATEMENT

By this action, filed in the United States District Court for the District of Columbia, petitioners seek to prevent the construction of a motor hotel on prop-

erty owned by the Pittsburgh, Pennsylvania, Urban Redevelopment Authority through a mandatory injunction requiring the respondent, the Administrator of the Housing and Home Finance Agency (HHFA), to withdraw his approval of the project. Petitioners, corporations owning hotels in Pittsburgh, assert that this approval was in violation of Section 106(g) of the Housing Act of 1949, as amended, *supra*, p. 2.

In *Pittsburgh Hotels Ass'n* v. *The Urban Redevelopment Authority of Pittsburgh*, 309 F. 2d 186 (C.A. 3), these same petitioners advanced the same contentions in an endeavor to enjoin local Pittsburgh officials and private developers from proceeding with the construction of the same motor hotel. The HHFA administrator was not named, however, as a party defendant. The District Court for the Western District of Pennsylvania entered summary judgment against petitioners (202 F. Supp. 486) and the Third Circuit affirmed. It held that petitioners lacked standing to maintain the action, and, further, that, in any event, the provisions of Section 106(g) requiring an independent analysis of local transient housing and a determination of need for additional hotels prior to hotel construction on urban redevelopment property were not applicable to the construction project in issue. This Court denied certiorari, 372 U.S. 916.

1. *The background of the litigation.* The relevant facts are not in dispute and are recited in the Third Circuit's opinion in the earlier case, which is reprinted in the appendix to the present petition (pp.

3a–11a). In 1952, the Federal Housing Administration entered into a contract with the Pittsburgh Urban Redevelopment Authority (the Authority) in which it agreed to advance funds to the Authority for the purpose of making surveys and plans for a redevelopment project in Pittsburgh. In 1955, the Pittsburgh City Planning Commission completed a plan for the proposed redevelopment of a 46 block area in the Lower Hill district. The plan divided the land into areas on a use basis (*e.g.*, commercial, cultural, recreational, educational and residential) and provided that the redeveloper was to devote the land to the uses specified in the Plan for each area (Pet. App. 4a–5a).

With respect to the area designated for commercial use, the Plan specifically included hotels in the list of permitted buildings, subject to another proviso which limited the height of any constructed building or structure to two stories or twenty feet. The Plan was expressly subject to modification at any time upon approval by specified city bodies, including the Authority (Pet. App. 5a).

The Plan was approved by the Pittsburgh City Council in July 1955 and, three months later, the Authority and HHFA entered in a Loan and Grant Contract pursuant to the Housing Act of 1949, as amended, under which financial assistance was to be provided to the Authority. The contract recited the approval of the Plan by HHFA and the contemplation of the parties that there would be periodic modifications (Pet. App. 5a–6a).

The Housing Act of 1949 was further amended by the Housing Act of 1959, 73 Stat. 654. Section

410 of that Act amended Section 106 of the 1949 Act by the addition of subsection (g), *supra*, p. 2. The new subsection conditioned the inclusion in an urban renewal plan of provisions permitting the future construction of hotels or other housing for transient use upon a determination by the community, following a "competent independent analysis of the local supply of transient housing," that a need existed for additional units of such housing in the renewal area.

Thereafter, on September 27, 1960, Modification No. 2 of the Plan was approved, removing a street from Parcel "B", which was designated for commercial use. Two private redevelopers then formed a corporation known as Golden Triangle Motor Hotel, Inc. The corporation sought and obtained from the Authority a six-month option to enter into a 99-year lease to redevelop the formerly designated street area by building an eight-story motor hotel. The proposed redevelopment of Parcel "B" was approved by the respondent as Administrator of the Housing and Home Finance Agency. No independent analysis of the local supply of transient housing has been made (Pet. App. 7a).

2. *The proceedings below.* As heretofore noted, petitioners (in conjunction with a hotel association and two other corporations owning hotels in Pittsburgh) first unsuccessfully endeavored to enjoin the construction of the motor hotel in Parcel "B" by a suit in the Western District of Pennsylvania against the Authority, the city and the private developers. On February 5, 1963, less than two weeks before this Court denied certiorari to the Third Circuit, the

present suit was instituted in the District Court for the District of Columbia against the HHFA Administrator. Based upon the same claim of a violation of Section 106(g) of the Housing Act of 1949, as amended, the complaint sought to compel the Administrator to withdraw his approval of the Authority's proposed lease of land to Golden Triangle Motor Hotel, Inc.

The district court dismissed the action on the ground that petitioners lacked standing, adopting the reasons set forth by the Third Circuit in the *Pittsburgh Hotels Association* case, which it pointed out involved "the same facts and legal issues" (Pet. App. 2a–3a). The District of Columbia Circuit affirmed. It noted in its *per curiam* opinion (Pet. App. 1a–2a):

> This case raises issues of fact and law virtually identical to those which were considered by the Court of Appeals for the Third Circuit in *Pittsburgh Hotels Association, Inc.* v. *Urban Redevelopment Authority of Pennsylvania*, 309 F. 2d 186 (1962), cert. denied, 372 U.S. 916 (1963). The parties there were substantially the same as those now before us, though relief here is sought against a Federal official, and there was sought against private parties and state officials. If the present appellants had obtained in the Third Circuit the relief they there sought, the controversy would have been effectively concluded. We are satisfied that in the interests of comity and the orderly administration of justice we should not attempt to reexamine the matters considered and resolved by the Third Circuit, a court having authority equal to our own.

ARGUMENT

This is the second attempt by these petitioners to obtain a judicial declaration that, in the absence of an independent analysis of the local supply of transient housing in the city of Pittsburgh and a determination of need for additional hotels, the approval of hotel construction on urban redevelopment land violates Section 106(g) of the Housing Act of 1949, as amended, *supra*, p. 2.

As the court below readily perceived, there is no compelling reason why petitioners should be permitted to relitigate the issues which were resolved adversely to them in the prior action brought in Pennsylvania. In any event, the Third Circuit correctly held in the alternative (1) that petitioners lacked standing to sue and (2) that the provisions of Section 106(g) were not violated. There is, accordingly, no more warrant for review by this Court now than there was when certiorari to the Third Circuit was denied just one year ago.[1]

1. The decision of the Second Circuit in *Taft Hotel Corporation* v. *Housing and Home Finance Agency*, 262 F. 2d 307, affirming 162 F. Supp. 538 (D. Conn.), certiorari denied, 359 U.S. 967, applied to administrative action under the Housing Act of 1949 the well-settled principle that standing to sue is not present

[1] The court below expressly declined to decide whether, in view of the prior action, the present suit was barred by principles of *res judicata* and collateral estoppel. While we think this Court similarly need not reach the question, in the event that certiorari is granted we reserve the right to urge that this action was so barred. Cf. *Beauzowski* v. *United States*, 181 F. 2d 419 (C.A. 3), certiorari denied, 340 U.S. 865.

merely because a person may sustain economic loss through competition made possible by federal aid.[2] In that case, as in the prior action here, the owner of an existing hotel was held to lack standing to maintain a suit to enjoin HHFA from furnishing financial assistance to a proposed urban redevelopment project insofar as the project included the erection of a competing hotel.

We do not understand petitioners to challenge the correctness of the *Taft Hotel Corporation* decision, which the Third Circuit followed in the prior action (Pet. App. 8a–9a). Rather, they urge (Pet. 23–24) that Congress, by the subsequent enactment of Section 106(g) of the Housing Act, intended to confer upon hotel owners the standing to complain of federally aided competition which they lacked theretofore.

Section 106(g) does not in terms confer such standing, and petitioners have pointed to nothing in its legislative history which suggests a Congressional intent to permit the maintenance of a suit to enforce its provisions by a hotel owner faced with the prospect of increased competition. Indeed, that history contains no reference whatever to the matter of the hotel owner's standing to complain, despite the fact that, as petitioners themselves stress (Pet. 18), there was undoubtedly a legislative awareness of the *Taft Hotel* decision.

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[2] See, *e.g.*, *Tennessee Power Co.* v. *TVA*, 306 U.S. 118; *Alabama Power Co.* v. *Ickes*, 302 U.S. 464; *Perkins* v. *Luken Steel Co.*, 310 U.S. 113, 125; *Allied-City Wide* v. *Cole*, 230 F. 2d 827 (C.A.D.C.).

Petitioners are thus forced to rely solely on the asserted fact that the amendment was enacted for the benefit of the class—that of hotel owners—to which they belong. Their argument appears to be that, perforce, the intended beneficiaries of a legislative enactment have standing to require compliance with it. But, as this Court has recognized, it is often the case that one whom Congress has sought to protect, and who in fact will suffer if the legislative mandate is ignored, has no standing to complain. For example, the Court has indicated that the employees of government contractors have no standing to enforce judicially the statutory guarantee of minimum wages. *Perkins* v. *Lukens Steel Co.*, 310 U.S. 113, 131. The reason is that, in the absence of some clear indication that judicial remedies were contemplated, Congress cannot be presumed to have encouraged "'[t]he interference of the Courts with the performance of the ordinary duties of the executive departments of the Government, [which] would be productive of nothing but mischief.'" *Id.* at 131–132; quoting from *Decatur* v. *Paulding*, 14 Pet. 497, 516. The conclusion that Congress meant to do its own policing is especially justified when the function is one that does not readily lend itself to judicial review. And certainly this is true of urban renewal. See *Berman* v. *Parker*, 348 U.S. 26.

These principles have been consistently applied by the courts of appeals in urban renewal cases. Thus, in *Johnson* v. *Redevelopment Agency*, 317 F. 2d 872 (C.A. 9), certiorari denied, 375 U.S. 915, a group of

residents in an area to be redeveloped s ht to enjoin the local agency from carrying out the proposed project on the ground that it had failed to provide a feasible plan for their relocation, as required by Section 105(c) of the Housing Act of 1949, as amended. The Ninth Circuit held that Congress had delegated the enforcement of that section to the Administrator of the Housing and Home Finance Agency and that the residents of an area to be cleared had no standing to enforce the provisions of the section. See, also, to the same effect, *Harrison-Halsted Community Group* v. *Housing and Home Finance Agency*, 310 F. 2d 99 (C.A. 7), certiorari denied, 373 U.S. 914.

Gart v. *Cole*, 263 F. 2d 244 (C.A. 2), certiorari denied, 359 U.S. 978, is not to the contrary. The Second Circuit there held only that property owners and residents in the area to be redeveloped had standing to challenge the Housing and Home Finance Agency Administrator's refusal to grant them an oral hearing on the feasibility of New York City's relocation plan and his failure to review personally the sufficiency of these plans.

Whereas, there, the question was whether procedures plainly required by the statute had been followed, here the question is whether the Act requires certain findings to be made before approval can be given. More fundamentally, the complaint in *Gart* went to the manner in which the Administrator reached his decision, while here the underlying argument is that satisfaction of substantive criteria relat-

ing to need was a prerequisite to any approval. As we have seen, that question has been uniformly resolved against petitioners' position by the Third, Seventh and Ninth Circuits, as well as by the Second Circuit itself in the *Taft Hotel* case.

2. Petitioners' argument on the merits stands on no firmer footing. As the Third Circuit pointed out (Pet. App. 10a), neither the provisions nor the legislative history of Section 106(g) indicate that it was intended to apply retroactively; *i.e.*, to hotel construction provided for in urban redevelopment plans approved prior to 1959. In this case, the inclusion of a provision for a hotel in the Authority's plan was approved by both local Pittsburgh officials and the Administrator of the Housing and Home Finance Agency almost four years before the effective date of the 1959 enactment.

Petitioners answer (Pet. 19–20) that the actual disposition of land for hotel construction here was not made until after the enactment of Section 106(g) and suggest that prospective application of the section would still require an independent survey of transient housing and a determination of need before the proposed motor hotel may be built. But this assertion is refuted by the plain wording of Section 106(g). Congress could have provided that no hotel was to be constructed unless preceded by the survey and determination of need. Instead, it chose to make these steps a condition precedent only to the *inclusion* of *provisions* in urban renewal plans for the new con-

struction of hotels. This approach indicates a deliberate legislative judgment to avoid interference with already approved urban renewal plans such as that here involved.

3. Contrary to petitioners' assertion, the question as to the application of Section 106(g) to the urban renewal plan here involved does not appear to be of broad, recurring importance. We are advised by the HHFA that the provisions of the Section are being applied with respect to all urban renewal plans approved after the date of its enactment in 1959, as well as those pre-1959 approved plans which were later modified so substantially as to make them virtually new plans. Thus, the statutory construction issue has no prospective significance but is limited in scope to the urban renewal plans approved before 1959 and not substantially changed thereafter.

In this connection, petitioners are mistaken in suggesting (Pet. 14) that prior to the enactment of Section 106(g) it was customary to include in each urban renewal plan a reference to hotels "in the boiler-plate authorization for incidental commercial construction." A random survey recently conducted by HHFA's Regional Office in Philadelphia of 62 urban redevelopment projects in five states (including Pennsylvania) and the District of Columbia disclosed only 14 plans which expressly authorized hotel construction and nine plans which may have impliedly permitted such construction.

CONCLUSION

For the reasons stated, the petition for certiorari should be denied.

Respectfully submitted.

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HILTON HOTELS CORPORATION, ALLEGHENY HOTEL CORPORATION, SHERATON MID-CONTINENT CORPORATION,
Petitioners,

v.

ROBERT C. WEAVER, Administrator of the Housing and Home Finance Agency, *Respondent.*

On Petition for Writ of Certiorari to the United States Court of Appeals for the District of Columbia Circuit

PETITIONERS' REPLY BRIEF

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Dated March 4, 1964

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PETITIONERS' REPLY BRIEF

SUMMARY OF ARGUMENT

Respondent concedes that the question presented is important to more than 200 urban American communities. Further, the decision of the court below, denying standing to petitioners to enforce a procedure in-

serted into the Housing Act for their benefit, conflicts with the Second Circuit decision in *Gart* v. *Cole*, 263 F. 2d 244 (2d Cir.), *cert. denied*, 359 U.S. 978 (1959). Respondent concedes that the enactment of § 106(g) was a direct legislative response to *Taft Hotel Corp.* v. *HHFA*, 262 F. 2d 307 (2d Cir. 1958), *cert. denied*, 359 U.S. 967 (1959). Accordingly, the *Taft* case no longer reflects the law on standing. The issue presented is of widespread importance and involves a conflict between Circuit Courts. It requires review by this Court.

ARGUMENT

1. Respondent concedes that the question presented is important to more than 200 urban American communities. Petitioners contended that the same problem regarding hotel construction exists in most of the 600 urban renewal projects which had been approved, but not completed prior to the enactment of § 106(g). (Petition, pp. 13-16) This estimate, while admittedly subject to some correction, was based on the HHFA's own published reports. Respondent's entire answer is to state that the problem presented does not exist in *all* of these projects but only in *some* of them. Respondent asserts that a random HHFA survey made by them of 5 states revealed that *only* 37 percent of the urban renewal plans sampled contain a form of incidental authorization for hotel construction such as appears in the Pittsburgh plan in this case. Applied on a nationwide basis this would mean that over *200* urban renewal plans contain such provisions. Surely a question which involves over 200 urban American communities is not *de minimis*. Thus, even accepting respondent's figure, the issue remains of major importance.

2. As indicated in the Petition, the decision below conflicts with *Gart* v. *Cole*, 263 F. 2d 244, 250 (2d Cir.), *cert. denied*, 359 U.S. 978 (1959), which holds that those for whose benefit a procedure was inserted in the Housing Act do have standing to seek judicial enforcement of that procedure.

Contrary to respondent's statement[1] petitioners have not asked the Court to determine the *substantive* question under the statute, that is, whether or not there "exists in the area a need for additional units of [transient] housing." Rather, petitioners seek a declaration that respondent is bound to obey the *procedure* set forth by Congress in the statute and *procure a survey of need* prior to authorizing the construction of the now proposed hotel. Both *Gart* and the instant case concern the question of a party's standing to seek enforcement of *procedural* rights inserted in the Housing Act for his protection. The decision of the Second Circuit in *Gart* and the decision of the court below are squarely in conflict.

3. Respondent's citation of *Perkins* v. *Lukens Steel Co.*, 310 U.S. 113 (1940), is inapposite, for there the Court determined that the statute allegedly infringed by a government agency, did not confer standing on the plaintiffs because it had not been passed for the benefit of the plaintiffs. As the Court stated:

> "Section 3709 of the Revised Statutes requires . . . *for the Government's benefit* that its contracts be

[1] "More fundamentally, the complaint in *Gart* went to the manner in which the Administrator reached his decision, while here the underlying argument is that satisfaction of substantive criteria relating to need was a prerequisite to any approval." (Respondent's Brief, pp. 10-11) As shown above, *both* situations, of course, involve a *procedure* to be followed by respondent.

made after public advertising. It was *not* enacted for the protection of sellers and confers no enforceable rights upon prospective bidders." (Emphasis supplied. 310 U.S. at 126).

The instant case is to the contrary for it cannot be denied that § 106(g) was a positive expression of Congressional concern for hotels in the *Taft* situation and was passed specifically to protect existing hotels.

This is not a situation, as in the old cases cited by respondent, where the complaint merely charges economic loss "through competition made possible by federal aid," and where Congress has expressed no concern for the complainants.[2] Here, Congress has clearly announced that competition with existing hotels shall not be created with government subsidies, unless a specific procedure is followed and there is a precise demonstration of conditions of need. That procedure was inserted in the law to protect hotels. It has been arbitrarily disregarded by respondent in this case.

4. Respondent concedes that the enactment of § 106 (g) was a direct legislative response to *Taft Hotel Corp.* v. *HHFA*, 262 F. 2d 307 (2d Cir. 1958), *cert. denied*, 359 U.S. 967 (1959), wherein the owner of an existing hotel was denied standing to challenge HHFA irregularities in the authorization of a hotel for an urban renewal project. Nevertheless, respondent contends illogically that the addition of § 106(g) did nothing to change the law of the *Taft* case, and asserts that in the absence of express authority in § 106(g) petitioners are still to be denied standing to sue.

Of course § 106(g) changed the law. The entire legislative history of § 106(g) reflects Congress' intent

[2] Respondent's Brief, p. 8.

further to protect hotels from the unlawful competition of subsidized, unneeded hotels by restricting urban renewal projects, as other government assisted housing programs, to the creation of "sound permanent housing for *residential* use."[3] Where, as in § 106(g), the statute is silent as to standing but the intent and purpose of the legislation is clear, standing is properly to be inferred:

> "Implied rights of action are not contingent upon statutory language which affirmatively indicates that they are intended. On the contrary, they are implied unless the legislation evidences a contrary intention." *Brown* v. *Bullock*, 194 F. Supp. 207, 224 (S.D.N.Y.), *affirmed*, 294 F. 2d 415 (2d Cir. 1961).[4]

5. Respondent's construction of the "plain wording" of the statute as applying only to "the *inclusion* of *provisions* in urban renewal plans" is, to say the least, unduly literal. It completely overlooks the fact that

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[3] H.R. Rep. No. 2359 of the House Committee on Banking and Currency on S. 4035, the Housing Act of 1958, 85th Cong., 2d Sess., 33, 40 (1958). (Emphasis in Original) See Petition, pp. 17-20.

[4] "Increasingly, the tendency in the federal courts has been to infer private rights of action from federal statutes unless to do so would defeat manifest congressional purpose. See, e.g., *Texas & Pac. R. Co.* v. *Rigsby*, 241 U.S. 33; *Tunstall* v. *Brotherhood of Locomotive Firemen & Enginemen*, 323 U.S. 210; *Neiswonger* v. *Good-Year Tire & Rubber Co.*, D.C., 35 F. 2d 761; *Reitmeister* v. *Reitmeister*, 2 Cir., 162 F. 2d 691; *Fitzgerald* v. *Pan American World Airways*, 2 Cir., 229 F. 2d 499; *Roosevelt Field, Inc.* v. *Town of North Hempstead*, D.C., 200 F. Supp. 360". (*Wheeldin* v. *Wheeler*, 373 U.S. 647 at 662 (1963), dissenting opinion).

[5] As Justice Frankfurter observed: "One would suppose that this particular theory of statutory construction had had its brains knocked out. . . ." (*Massachusetts Bonding & Ins. Co.* v. *United States*, 352 U.S. 128, 138 (1956) dissenting opinion). Moreover,

the statute was aimed at urban renewal, not at provisions for urban renewal. The unrealistic construction of the statute proposed by respondent should be rejected. As this Court has stated, it will avoid such rituals of statutory construction and

> "will construe the details of an act in conformity with its dominating general purpose, will read text in the light of context and will interpret the text so far as the meaning of the words fairly permits so as to carry out in particular cases the generally expressed legislative policy." (*SEC* v. *C. M. Joiner Leasing Corp.*, 320 U.S. 344 at 350-51 (1943))

6. Respondent is mistaken in his second point. Retroactivity in the application of § 106(g) is not in issue. To the contrary, the statute was intended to apply prospectively and remedially to *all future* hotel construction in urban renewal areas. Congress clearly intended that § 106(g) "would make it necessary for a survey to be made before a new hotel could be built in an urban renewal area."[6] Section 106(g) was enacted in 1959. The hotel now in issue was not proposed until 1960, and was not begun at least as late as the filing of the opinion of the court below. No problem of retroactivity lies in the application of § 106(g) to this hotel, and no more delay should be tolerated in applying this remedial provision to all newly proposed hotels in urban renewal projects.

Judge Learned Hand has warned against restricting the meaning of a statute to the meaning of its "plain words": "There is no surer way to misread any document than to read it literally." (*Guiseppi* v. *Walling*, 144 F. 2d 608, 624 (2d Cir. 1944), *aff'd* 324 U.S. 244 (1945)).

[6] 105 Cong. Rec. 8815 (May 21, 1959). See Petition, pp. 17-20.

CONCLUSION

For the foregoing reasons and those stated in the Petition, a writ of certiorari should be granted.

Respectfully submitted.

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